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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 488

EDWARD HEAGNEY,

Petitioner,

vs.

BROOKLYN EASTERN DISTRICT TERMINAL,

Respondent.

PETITION FOR REHEARING

CARLTON A. WALLS,
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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petition of Edward Heagney for reconsideration of the Petition for a Writ of Certiorari to the Court of Appeals for the Second Circuit, which was denied on January 28, 1952 respectfully shows:

The denial of the Writ of Certiorari is inconsistent with the decision in Dice v. The Akron, Canton and Youngstown Railroad Company.

In the *Dice* case, No. 374—October Term, 1951, decided on February 4, 1952, the Court stressed the neces-

sity of uniform application of the Federal Employers' Liability Act throughout the country. Such uniformity cannot be obtained if, as in this case, an injured employee is not permitted to pursue his remedy under the Act because of a State statute which provides for waiver of such rights.

The question whether the conduct of the petitioner could be construed as a waiver of his rights under the Federal Employers' Liability Act was one which had to be determined in the light of all the circumstances. It presented a question of fact. The District Judge, however, decided it as a question of law and granted Summary Judgment. By so doing he deprived the petitioner of his right to trial by jury.

Wherefore your petitioner prays that the Court reconsider his petition that a Writ of Certiorari may issue out of this Court to the Court of Appeals for the Second Circuit.

Dated, February 8, 1952.

Respectfully submitted,

CARLTON A. WALLS,
Counsel for Petitioner,
No. 55 John Street,
New York City, N. Y.

CERTIFICATE OF COUNSEL

I, CARLTON A. WALLS, counsel for the above named petitioner, DO HEREBY CERTIFY that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay; and said petition is restricted to circumstances of a substantial effect intervening since the denial of same.

CARLTON A. WALLS,
Counsel for Petitioner.